

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B07
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Date:
September 28, 2007

Legend

Wife =

Date 1 =

Trust =

Trust 1 =

Trust 2 =

Trust 3 =

Child 1 =

Child 2 =

Child 3 =

Husband =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear :

This is in response to your letter dated August 4, 2006, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to trusts created by Wife.

The facts and representations submitted are summarized as follows: On Date 1, Wife created Trust for the benefit of her descendants. Under the terms of the trust agreement, the principal was immediately divided into three separate shares: Trust 1, Trust 2, and Trust 3. Trust 1 is held for the benefit of Child 1; Trust 2 is held for the benefit of Child 2; and Trust 3 is held for the benefit of Child 3.

The trust agreement provides that during each child's life, the trustees may, in their discretion, distribute net income or principal to or for the benefit of the child for whom the trust is held and his or her descendants. Husband may not participate in distribution decisions relating to distribution of net income. Net income may be distributed for a beneficiary's education, maintenance, health, support in reasonable comfort, and other purposes as the trustees may deem in a beneficiary's best interests. Principal may be distributed for a beneficiary's education, maintenance, health and support in reasonable comfort. On a child's death, the child has a limited power to appoint the trust assets held for his or her benefit to Wife's descendants (other than the child for whom the trust is held), in trust or outright. If a child fails to exercise his or her power of appointment, the principal shall be distributed to his or her descendants, per stirpes. If there are none, the principal shall be distributed to Wife's descendants, per stirpes. Unless terminated earlier, all trusts created under the trust agreement shall terminate twenty-one years after the death of the last to survive of Husband and the descendants of Wife's mother living on Date 1.

Husband and Wife transferred assets to each trust on Date 2, Date 3, and Date 4. Date 1, Date 2, Date 3, and Date 4 are all in Year 1. Husband and Wife each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return ("gift tax return") for Year 1 reporting the transfers to the trusts. On each return, Husband and Wife elected to split gifts under § 2513. Taxpayers relied upon qualified tax professionals to prepare the Year 1 tax returns and the qualified tax professionals failed to properly allocate each taxpayer's GST exemption to the transfers.

In Year 2, a qualified tax professional, other than the tax professional who prepared the Year 1 tax returns, found the failure to allocate the GST exemption in Year 2 when assisting the taxpayers with additional tax planning. In order to correct the error, the taxpayers made late allocations of their GST exemption.

Husband and Wife have each requested an extension of time to allocate GST exemption to the Year 1 transfers to each trust and a ruling that the Year 2 late allocations are invalid.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 25.2513-2(a)(1)(ii) of the Gift Tax Regulations provides that consent to the application of the provisions of § 2513 with respect to a “calendar period” shall, in order to be effective be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if the consent of each spouse is signified on his own return.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual’s estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor’s lifetime, other than in a direct skip, is made on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. An allocation of GST exemption to a trust is void to the extent the amount of the allocation exceeds the amount necessary to obtain a zero inclusion ratio with respect to the trust.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for

requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband and Wife are each granted an extension of time of 60 days from the date of this letter to file a Form 709 for Year 1. The Form 709 should include a Notice of Allocation properly allocating each taxpayer's GST exemption to the Year 1 transfers to Trust 1, Trust 2, and Trust 3. Each allocation will be effective as of the date of the transfer, and the gift tax value of the transfer to each trust will be used in determining the amount of GST exemption to be allocated to the trust. The inclusion ratio for each trust will be determined under §§ 2642(a) and 2642(b). To the extent that the Year 1 allocations of GST exemption result in a zero inclusion ratio for a trust, the Year 2 late allocations are invalid. A copy of this letter should be attached to the supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding the value of the property transferred to the trusts in Year 1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter for § 6110 purposes
Copy of this letter